



GRAND RIVER | SOLUTIONS

University of Tennessee System- Wide Training

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August 2023

Grand River Solutions

Meet Your Facilitators



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She/her/hers

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Director of Consulting Services

Agenda

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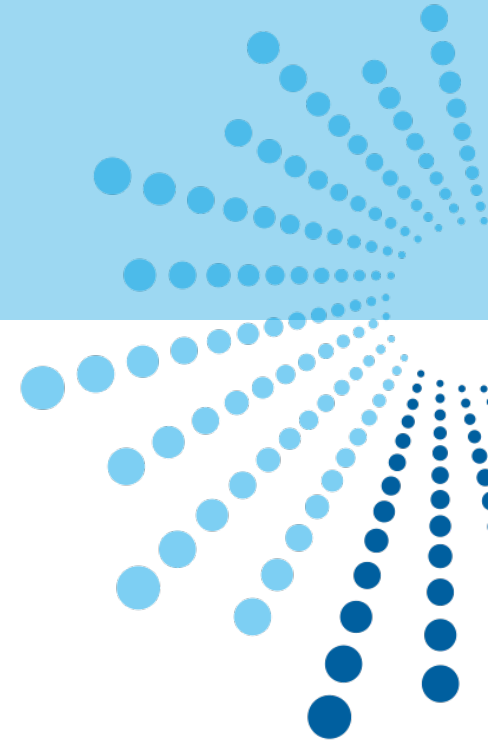
Evaluating Evidence



Regulatory Overview

01

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The History of Title IX

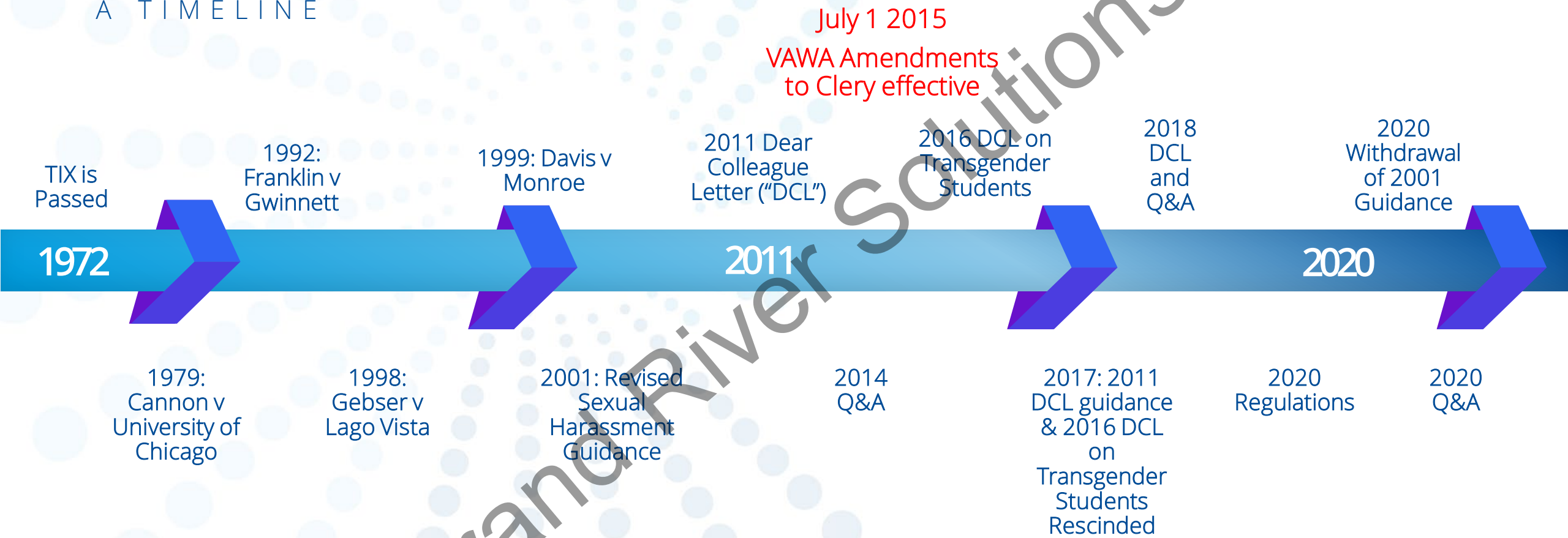
A TIMELINE



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The History of Title IX and Related

A TIMELINE





The Title IX Regulations

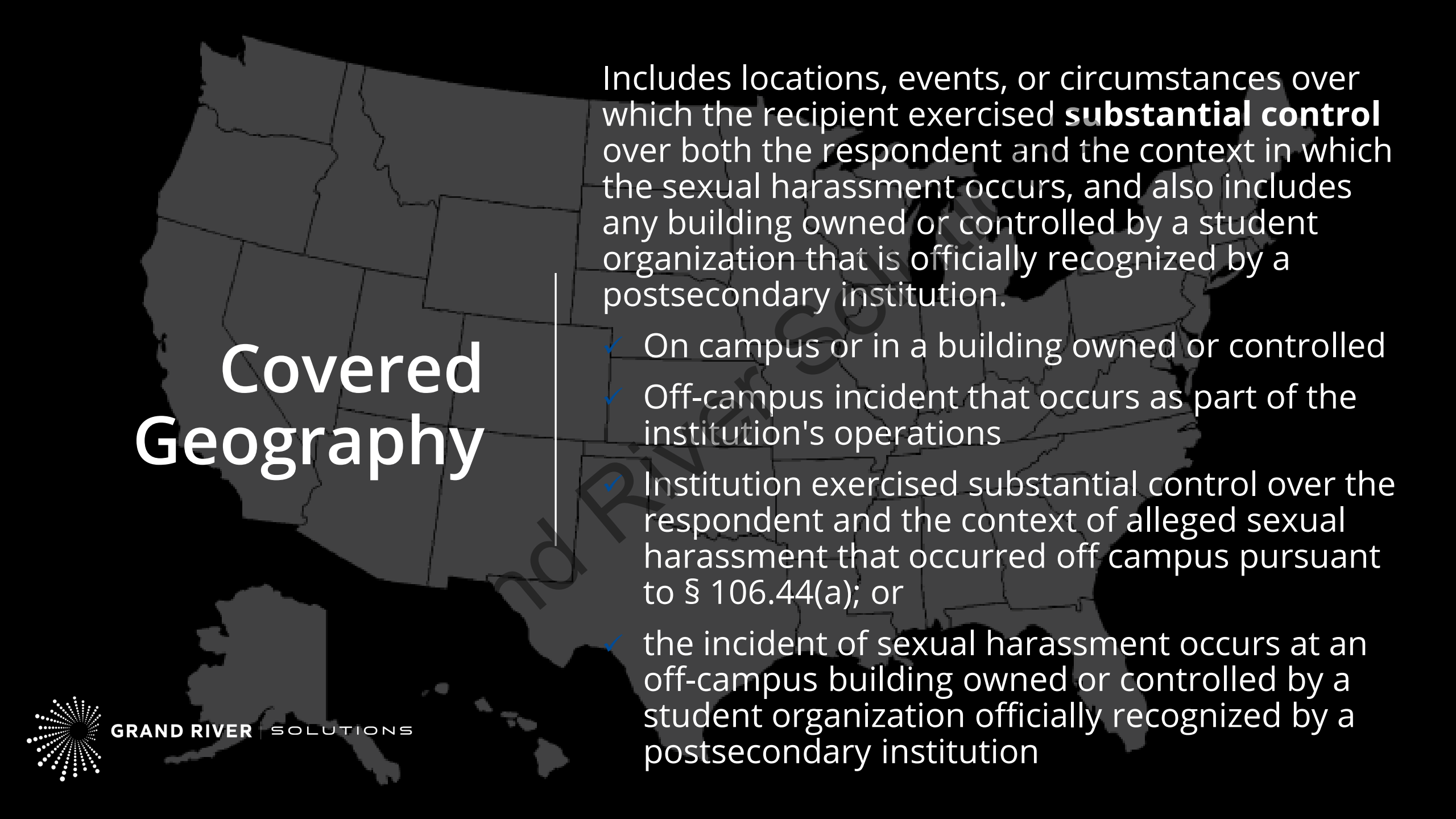
Sexual Harassment Only

1. Narrows the definition of sexual harassment;
2. Narrows the scope of the institution's educational program or activity;
3. Narrows eligibility to file a complaint;
4. Develops procedural requirements for the investigation and adjudication of sexual harassment complaints, only.

Sexual Harassment: *Section 106.30*

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

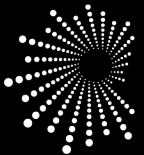
- (1) An **employee** of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it **effectively denies** a person equal access to the recipient's education program or activity; or
- (3) "**Sexual assault**" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "**dating violence**" as defined in 34 U.S.C. 12291(a)(10), "**domestic violence**" as defined in 34 U.S.C. 12291(a)(8), or "**stalking**" as defined in 34 U.S.C. 12291(a)(30).

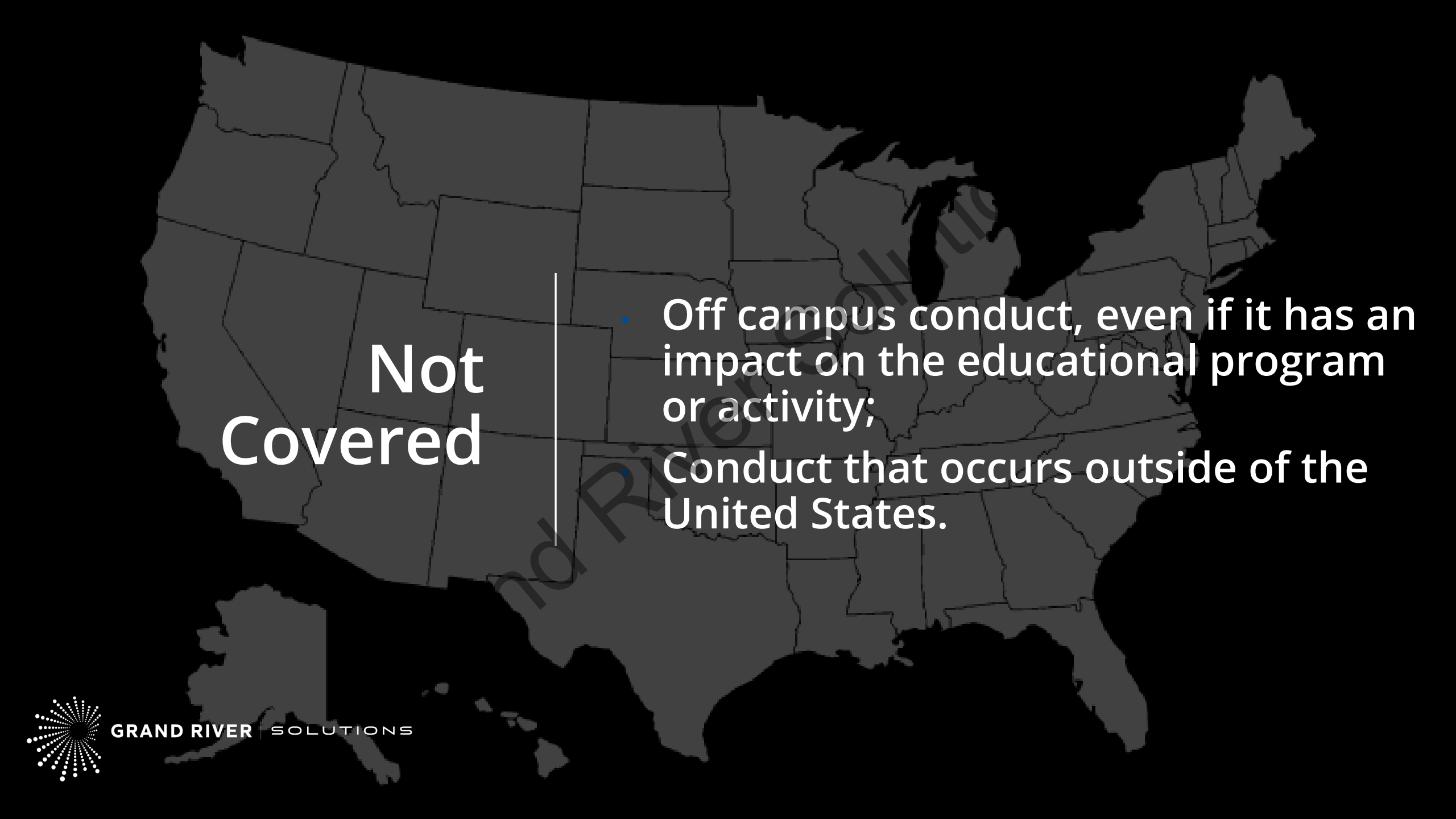


Covered Geography

Includes locations, events, or circumstances over which the recipient exercised **substantial control** over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

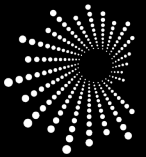
- ✓ On campus or in a building owned or controlled
- ✓ Off-campus incident that occurs as part of the institution's operations
- ✓ Institution exercised substantial control over the respondent and the context of alleged sexual harassment that occurred off campus pursuant to § 106.44(a); or
- ✓ the incident of sexual harassment occurs at an off-campus building owned or controlled by a student organization officially recognized by a postsecondary institution





Not Covered

- Off campus conduct, even if it has an impact on the educational program or activity;
- Conduct that occurs outside of the United States.





Covered Individuals

Eligibility for Title IX's Protections

“At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.” 34 C.F.R. § 106.30

Applicant

Accepted/Hired

Enrolled/Employed

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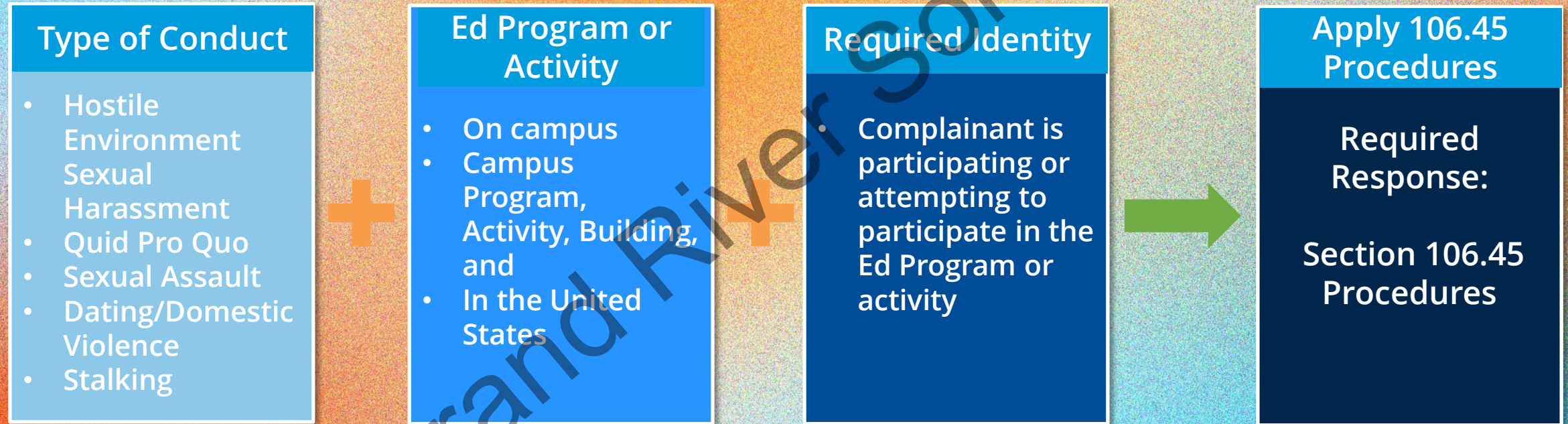
Programs or Activities

Field trip *in the United States*

Sports, theater, debate, academic competition

An away game for a sports team or the band

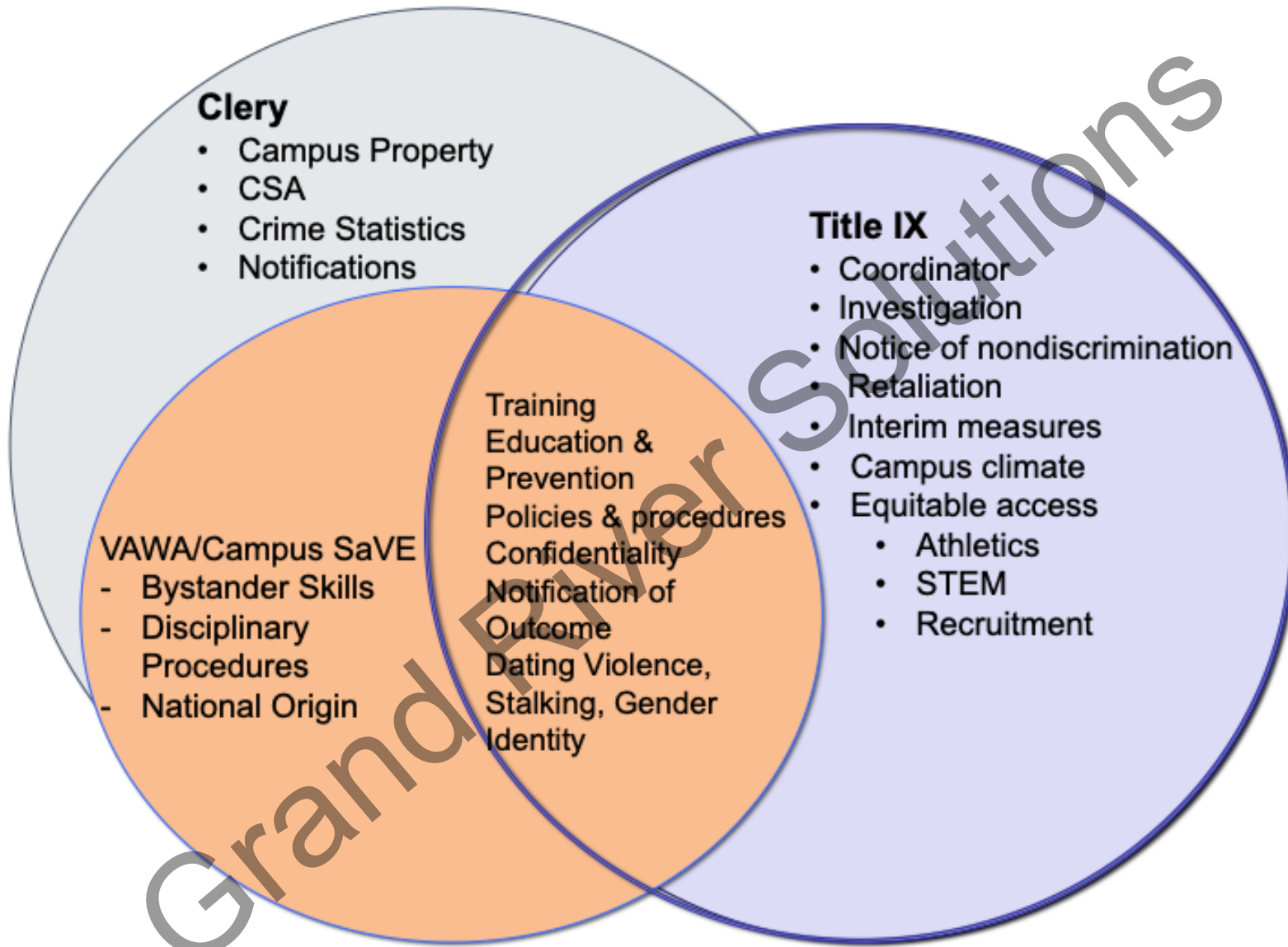
Title IX Application Post May 2020 Regulations



Conduct Falling Outside the Scope of Title IX

- Apply other institutional policies and procedures
- Ensure that those policies and procedures are compliant with VAWA/Clery, other intersecting federal and state laws





Actual Notice

A Narrowed Scope of Institutional Responsibility

Institution must respond when it has:

“Actual knowledge”

When “an official of the recipient who has authority to institute corrective measures” has notice, e.g., Title IX Coordinator

of “sexual harassment” (as newly defined)

that occurred within the school’s “education program or activity”

“includes locations, events, or circumstances over which the recipient exercised substantial control” over the respondent and the context in which the sexual harassment occurred

Fact specific inquiry focused on control, sponsorship, applicable rules, etc.

against a “person in the United States” (so, not in study abroad context)

Other Requirements of the Regulations

Designation of
a Title IX
Coordinator

Dissemination
of policy

Separation of
Responsibilities

Training and
posting of
training

Impartiality

Record
Keeping

Impartiality

Avoiding Prejudgment and Bias

“The Department’s interest in ensuring impartial Title IX proceedings that avoid prejudgment of the facts at issue necessitates a broad prohibition on sex stereotypes so that decisions are made on the basis of individualized facts and not on stereotypical notions of what “men” or “women” do or do not do.” 85 Fed. Reg. 30254 (May 19, 2020).

Impartiality

Avoiding Prejudgment and Bias

Do not rely on cultural “rape myths”

Do not rely on cultural stereotypes about how men or women purportedly behave

Do not rely on gender-specific research data or theories to decide or make inferences of relevance or credibility in particular cases

Recognize that anyone, regardless of sex, gender, gender identity or sexual orientation, can be a victim or perpetrator of sexual assault or other violence

Avoid any perception of bias in favor of or against complainants or respondents generally

Employ interview and investigation approaches that demonstrate a commitment to impartiality

Impartiality

Avoiding Bias

Department also rejected commenters' arguments that individuals should be disqualified from serving as investigators because of past personal or professional experience

"Department encourages [schools] to apply an objective (whether a reasonable person would believe bias exists), common sense approach to evaluating whether a particular person serving in a Title IX role is biased" WHILE

"exercising caution not to apply generalizations that might unreasonably conclude that bias exists (for example, assuming that all self-professed feminists, or self-described survivors, are biased against men, or that a male is incapable of being sensitive to women, or that prior work as a victim advocate, or as a defense attorney, renders the person biased for or against complainants or respondents"

Impartiality

Avoiding Conflicts of Interest

Commenters argued that investigators and hearing officers employed by schools have an “inherent conflict of interest” because of their affiliation with the school, so Department should require investigations and hearings to be conducted by external contractors

Department noted that some of those commenters argued that this resulted in bias against complainants, and some argued that this resulted in bias against respondents

Department’s response: Department’s authority is over schools, not individual investigators and other personnel, so Department will focus on holding school’s responsible for impartial end result of process, without labeling certain administrative relationships as per se involving conflicts of interest

Impartiality

Avoiding Prejudgment, Bias, and Conflicts of Interest

Bottom line

- Follow facts of every individual case
- Investigate in manner that will not allow even a perception of prejudice or bias for or against any party



Receipt of Reports

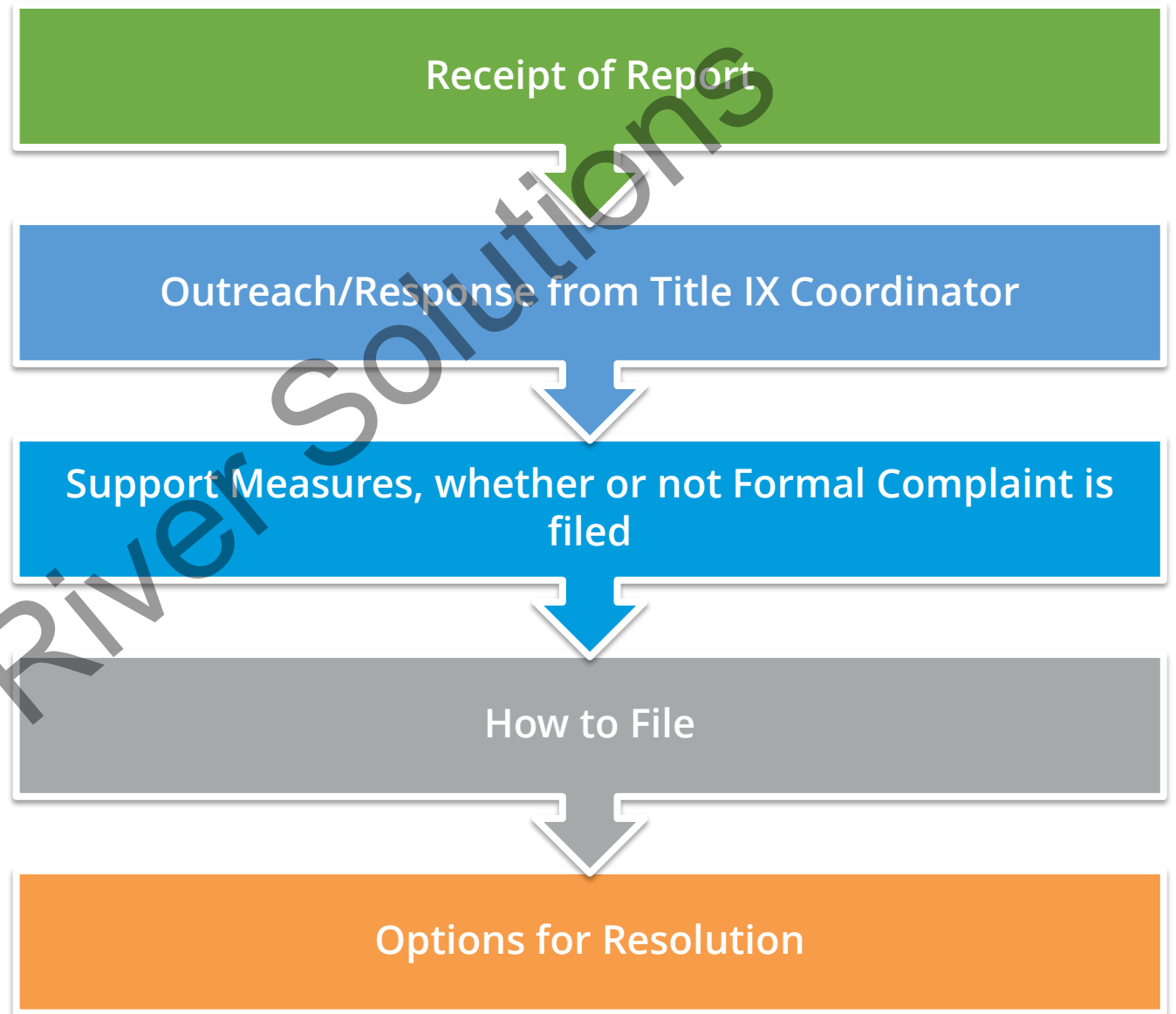
Actual Knowledge, Report Response,
Initial Assessments, and Supportive Measures

02

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Initial Response Requirements



Receiving Reports and Initiating the Response



1. REVIEW THE
REPORT



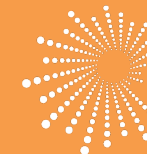
2. DETERMINE THE
APPROPRIATE INITIAL
RESPONSE



3. PROMPTLY
INITIATE THAT
RESPONSE



4. DOCUMENT/RECORD
THE RECEIPT OF THE
REPORT AND THE
RESPONSE THERETO



Initial Outreach

FIRST — SAFETY

Email

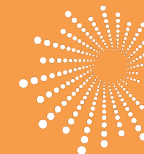
- Create forms

Phone

In person

- Use RA
- Campus safety

Follow up emails



Emergency Removal of Student

- High threshold
- Not a determination of responsibility
- Whether or not grievance is underway
- Individualized
- Immediate threat (physical)
- Opportunity to challenge



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Initial Meeting with the Complainant

- Prepare for the meeting
- Select appropriate space
- Build trust and rapport; empower
- Explain your role
- Discuss available support
- Options for reporting
- Answer questions
- Evidence collection/preservation
- Conclude with a discussion of next steps



Supportive Measures

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May not unreasonably burden the other party

Non-Disciplinary

Non-punitive

Supportive Measures

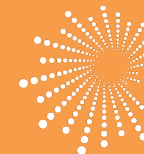
Designed to restore or preserve equal access

As appropriate and reasonably available

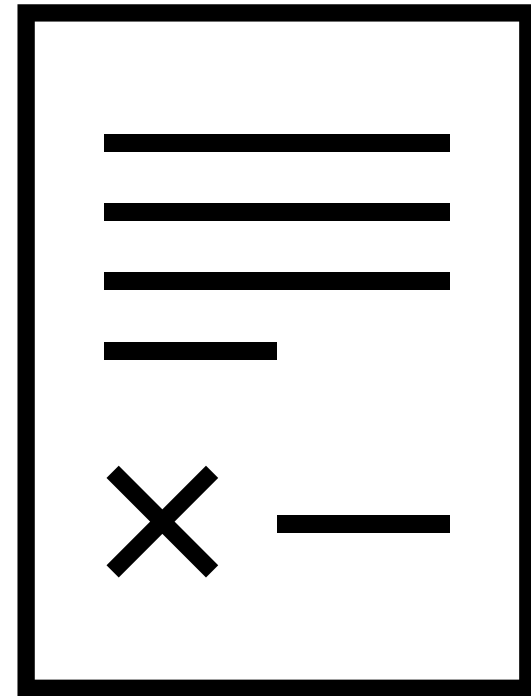
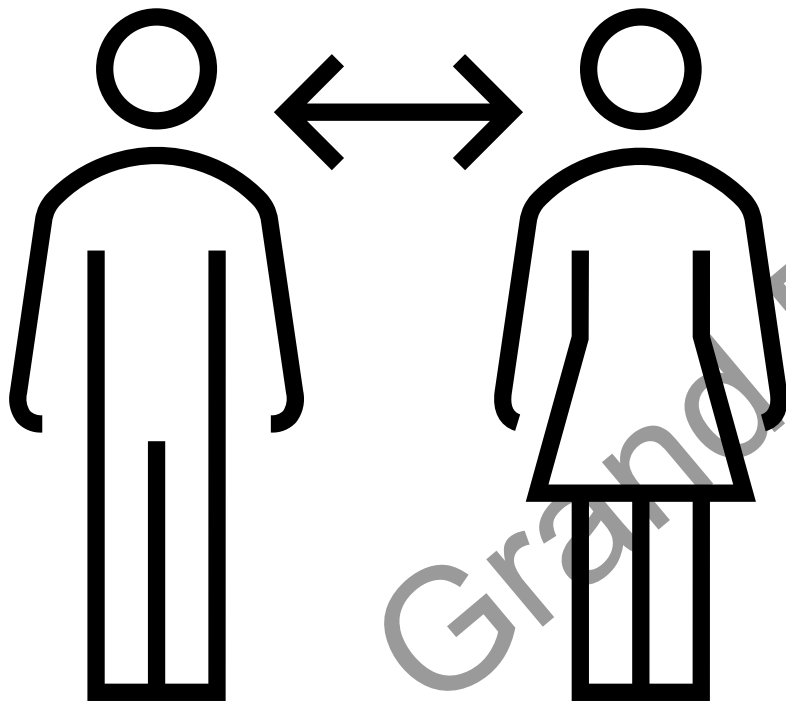
Confidential

Examples of Supportive Measures

- Assistance obtaining access to counseling, advocacy, or medical services;
- Assistance obtaining access to academic support and requesting academic adjustments/accommodations;
- Changes in class schedules;
- Assistance requesting changes in work schedules, job assignments, or other work adjustments/accommodations;
- Changes in campus housing;
- Safety escorts;
- Leaves of absence;
- Mutual restrictions on contact between the Parties (“No-contact” orders).



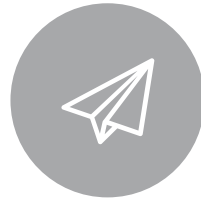
“Mutual Restrictions On Contact Between the Parties”



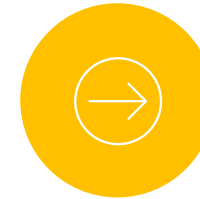
Post Meeting Tasks



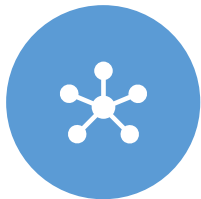
Document the meeting



Send a summary email with resources, options, next steps



Follow up



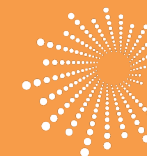
Make connections



Provide the supportive measures



Document supportive measures requested, provided, and not provided. Where not provided, indicate why.





Report Resolution

Remedies Based, Informal, or Formal

04

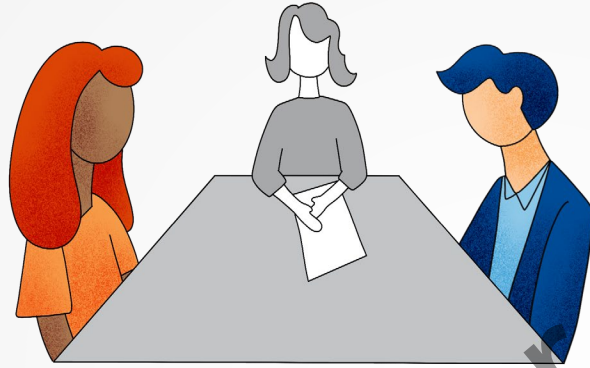
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How to Proceed?



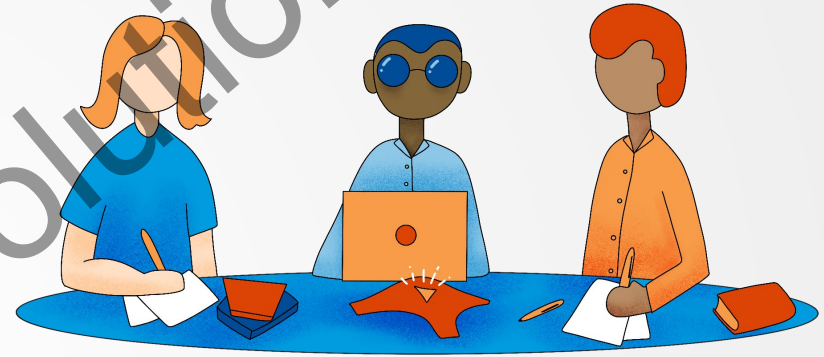
Remedies-based

No formal process



Alternative/Informal

Signed agreement;
Voluntary;
What records?



Formal/ Investigation/ Hearing

All requirements of 106.45



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Remedies Based Resolution

04(a)

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Remedies Based Resolutions

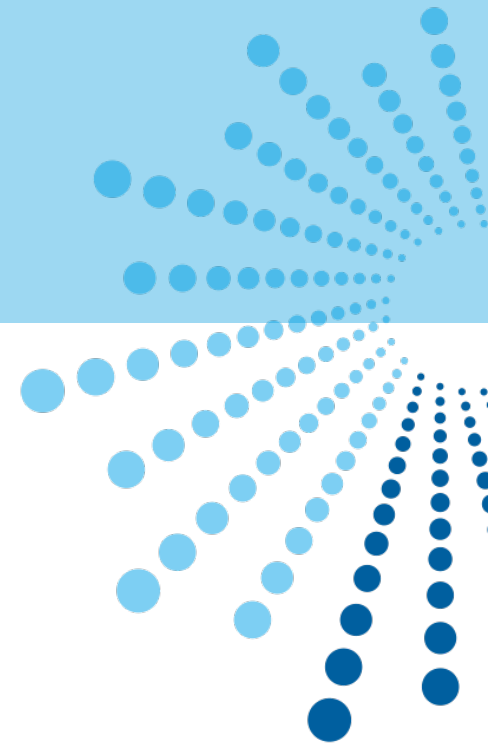
- Supportive Measures
- Educational Conversations
- Targeted Education



Formal Complaint & Notice Requirements

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Formal Complaint Filed

By
Complainant

By the Title IX
Coordinator

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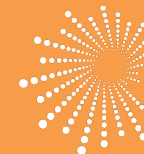
Factors to Consider When Determining Whether to File a Formal Complaint

Allegations
of Violence

Threats

Use of
weapons

Serial
predation



Formal Complaint

A Formal Complaint must include:

The Complainant's digital or physical signature, or an indication that the Complainant is the person filing the Formal Complaint;

An allegation of Prohibited Conduct as defined under this Policy. This may include:

- Where the incident(s) occurred; what incident(s) occurred; when the incident(s) occurred;

Identity of Respondent, if known;

A request for a resolution.

Formal Complaints may be made to the Title IX Coordinator by US Mail, email, or in person.

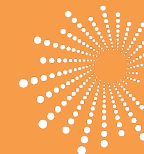
Dismissing Complaints

MANDATORY

- Not sexual harassment
- Did not occur in program or activity
- Not against person in the U.S.

DISCRETIONARY

- Complainant withdraws complaint
- Respondent no longer enrolled/employed
- School unable to collect sufficient info



Can Proceed Under Other Policy



Notifying the Respondent



FIRST—SAFETY

Don't send on a Friday

Don't send at 5pm

How will you notify

Consider impact of notification on Respondent

Make sure support available

Written Notification Meetings and Sufficient Time to Prepare

Notice of Allegation Requirements

- Notice of the allegations, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include:
 - the identities of the parties involved in the incident, if known,
 - the conduct allegedly constituting sexual harassment under § 106.30,
 - and the date and location of the alleged incident, if known.
- The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under paragraph (b)(5)(iv) of this section, and may inspect and review evidence under paragraph (b)(5)(vi) of this section.
- The written notice must inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process

Advisor of Choice

The advisor can be anyone, including an attorney;

Institutions cannot place restrictions on who can serve

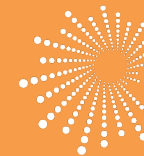
No training required

Institution must provide advisor for the purposes of cross examination

Initial Meeting with Respondent



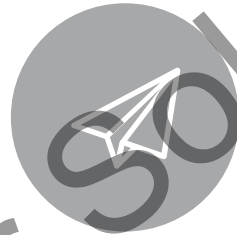
- Prepare for the meeting
- Select appropriate space
- Build trust and rapport; empower
- Explain your role
- Discuss available supportive measures
- Supportive measures that provided to complainant that impact them
- Answer questions
- Evidence collection/preservation
- Conclude with a discussion of next steps



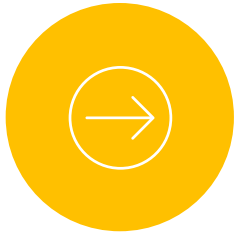
Post Meeting Tasks



Document the meeting



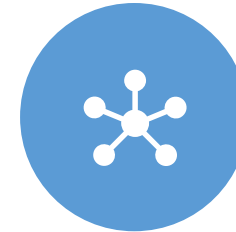
Send a summary email with resources, options, next steps



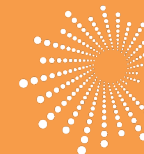
Follow up



Provide the supportive measures



Make connections



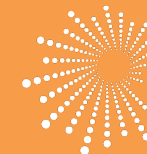
Formal Complaint Resolution

Informal Resolution

- Formal Complaint Required
- Parties must agree
- Can withdraw from process
- Alternate Resolution/Mediation
- No appeal

Formal Resolution

- Investigation and Adjudication process in compliance with Section 106.45

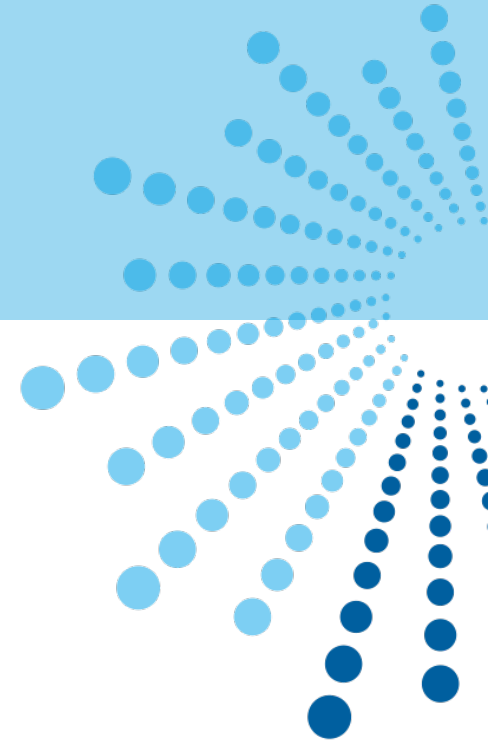




Informal Resolution

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Informal Resolution Requirements

- Formal Complaint must be filed
- Participation in an informal resolution must be voluntary
- Must occur prior to resolution via a formal process
- Parties must be permitted to withdraw and seek formal resolution
- Voluntary, written consent to the informal resolution must be obtained
- Facilitators of informal resolution must be trained

Informal Resolution Notice Requirements

- the allegations,
- the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process
- and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;

The background of the slide shows a group of people sitting around a table in a meeting or workshop. The image is overlaid with a semi-transparent orange filter. In the center, there is a white circular graphic with a thin teal border. Inside this circle, the text "Facilitators of Informal Resolution as Witnesses" is written in a bold, black, sans-serif font. A large, semi-transparent watermark "Grandkiner Solutions" is oriented diagonally across the entire slide, passing through the central circle.

**Facilitators of
Informal
Resolution as
Witnesses**

Informal Resolution is prohibited to resolve allegations that an employee sexually harassed a student.

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Formal Resolution

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Procedural Requirements for Investigations

Notice to both parties

Equal opportunity to present evidence

An advisor of choice

Written notification of meetings, etc., and sufficient time to prepare

Opportunity to review all evidence, and 10 days to submit a written response to the evidence prior to completion of the report

Report summarizing relevant evidence and 10 day review of report prior to hearing

Procedural Requirements for Hearings

Must be live, but can be conducted remotely

No Compelling participation

Standard of proof used may be preponderance of the evidence or clear and convincing; standard must be the same for student and employee matters

Cross examination must be permitted and must be conducted by advisor of choice or provided by the institution

Decision maker determines relevancy of questions and evidence offered

When someone doesn't submit to cross

Written decision must be issued that includes finding and sanction



The Procedural Requirements of the Investigation

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Essential steps of an investigation



Notice of formal investigation



Initial Interviews

Evidence Collection



Report writing

The Process

Developing an Investigative Strategy



Investigation Timeline

Prior History

- Between the Parties?
- Of the Parties?

Incident

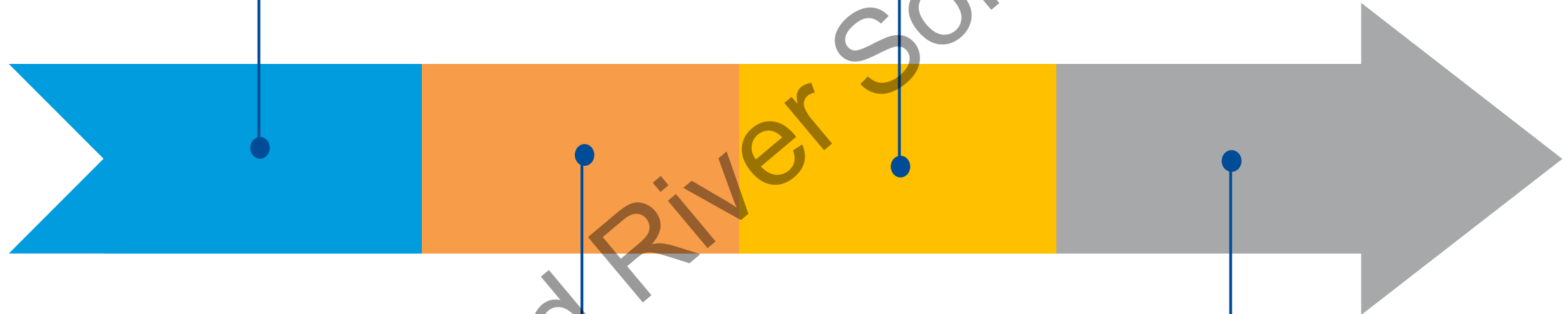
- Consent?
- Type of Contact?
- Injuries?

Pre-Incident

- Communications?
- Interactions?
- Conduct?

Post Incident

- Behaviors?
- Communications?



Interview Objectives



Connect

Build rapport
Build trust
Empower



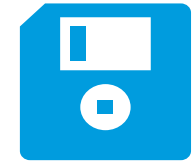
Listen

Allow interviewee to
share their experience



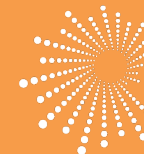
Clarify

Understand what you
have heard
Seek additional
information



Evidence Preservation

Text Messages
Photographs
Names and contact info
for witnesses



Prior to the Interview



Secure an appropriate meeting location



Allow for enough time to conclude the meeting



If interviewing a party, inform them of their right to have an advisor present.



Prepare for the meeting

Areas of focus?

Other evidence?

Go back review what you have



Provide Written Notice of the Meeting

Advise the parties/witnesses that you will be collecting evidence

Set Expectations

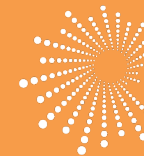
What they should expect of you

- That you are neutral
- That you will listen, what they are saying is important to you
- That you will keep the information they share private
- What you will do with recording/notes
- That you may have to ask difficult questions
- Patience, respect, and appreciation
- This will not be their only opportunity to speak with you
- Prepare the parties for follow up interviews and the "chiff"

What you expect of them

- Honesty
- That they will seek clarity if needed (give them permission to do so)
- That they wont guess or fill in blanks

Investigative Interviews





—

“Directly
Related” and
“Relevant
Evidence”

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Directly Related Evidence

Regulations do not define “Directly Related” Evidence.

Preamble states it should be interpreted using its plain and ordinary meaning.

Term is broader than:

- “all relevant evidence” as otherwise used in Title IX regulations, and
- “any information that will be used during informal and formal disciplinary meetings and hearings” as used in Clery Act

Includes evidence upon which the school does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source.

“Relevant” Evidence

The Department declines to define “relevant”, indicating that term “should be interpreted using [its] plain and ordinary meaning.”

See, e.g., Federal Rule of Evidence 401
Test for Relevant Evidence:

“Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.”

Logical connection between the evidence and facts at issue

Assists in coming to the conclusion – it is “of consequence”

Tends to make a fact more or less probable than it would be without that evidence



Evidence That is Not “Relevant”

“Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant,

- unless such questions and evidence about the complainant’s prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
- if the questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent.”

“require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.”

Physical and mental health records and attorney-client privileged communications would fit within scope of this prohibition.

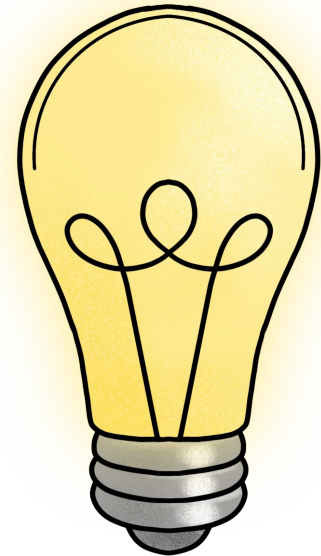
Who Decides?

Department emphasizes repeatedly in Preamble that investigators have discretion to determine relevance at this stage of the process.

- Subject to parties' right to argue upon review of "directly related" evidence that certain information not included in investigative report is relevant and should be given more weight.

Investigators will have to balance discretionary decisions not to summarize certain evidence in report against:

- Each party's right to argue their case, and
- Fact that decisions regarding responsibility will be made at hearing, not investigation stage.





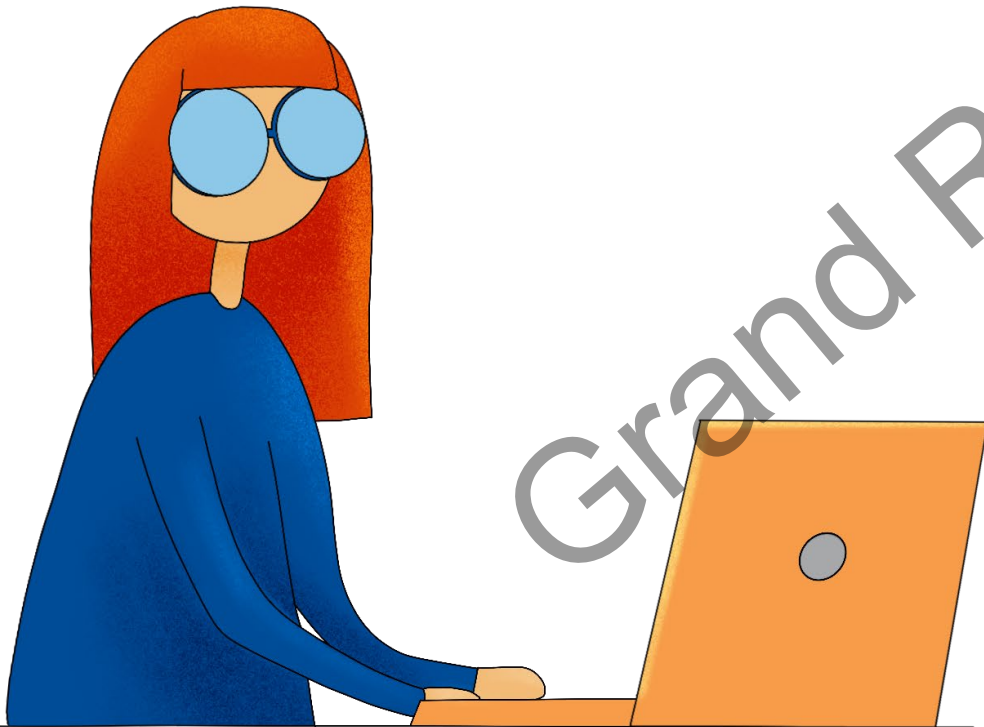
The Investigation Report

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06

At the conclusion of the investigation, we must create an investigative report that fairly summarizes relevant evidence.



Investigative Report: Form

- Develop or adopt a template and use it consistently
- Written Summary
- Appendices

Investigative Report Content: Overview

In this section, provide a very brief overview of the case. Include:

- the names of the parties,
- the applicable policy(ies)
- the prohibited conduct alleged,
- the date, time, and location of the conduct,
- a brief description of the alleged misconduct

Investigative Report Content: Jurisdiction

In this section state the institutions jurisdictional grounds:

- Cite the jurisdictional elements in the policy
- If there are several grounds for jurisdiction, state them.

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Investigative Report Content: Identification of the Investigators

Identify the
investigator(s)

Include a statement
that indicates that
they have been
properly trained.

Include information
about the training
the investigator
received.

Investigative Report Content: Objective of the Investigation and the Report

- This is a statement that sets forth the objective of the investigation, and
- The objective of the report



Investigative Report Content: List the Witnesses

- List those who were interviewed
- List those who were not interviewed
- Simple list
- Detailed list



Example of a Detailed List:

Witness Name	Witness identified by:	Information offered
John Doe	Reporting Party	Mr. Doe is the Reporting Party's best friend. He was with the Reporting Party the night of the reported incident.
Jane Doe	Investigators	Jane Doe is the Responding Party's roommate. It is believed that she saw the Reporting Party leave the Responding Party's residence immediately following the reported incident.

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Investigative Report Content: Evidence Collected

The final Title IX regulations require that all evidence obtained as part of the investigation that is directly related to the allegations in the formal complaint be shared with the parties and “made available at any hearing to give each party equal opportunity to refer to such evidence during the hearing including for the purposes of cross-examination.”

In this section, list the Evidence or Refer to Appendices.



Appendices



Compilation of the evidence.



organized intentionally and consistently



are attached to the report.



Includes the procedural timeline.

Examples of Appendices



Appendix A

Contains all of the party/witness testimony (e.g., transcripts, statements summaries, etc.) that the investigator deems relevant



Appendix B

Contains all of the documentary evidence (e.g., text messages, SANE reports, photographs, etc.) that the investigator deems relevant



Appendix C

Contains the remaining evidence deemed irrelevant by the investigator, but that is directly related to the allegations in the formal complaint



Appendix D

The procedural timeline

Investigative Report Content: Summary of the Evidence

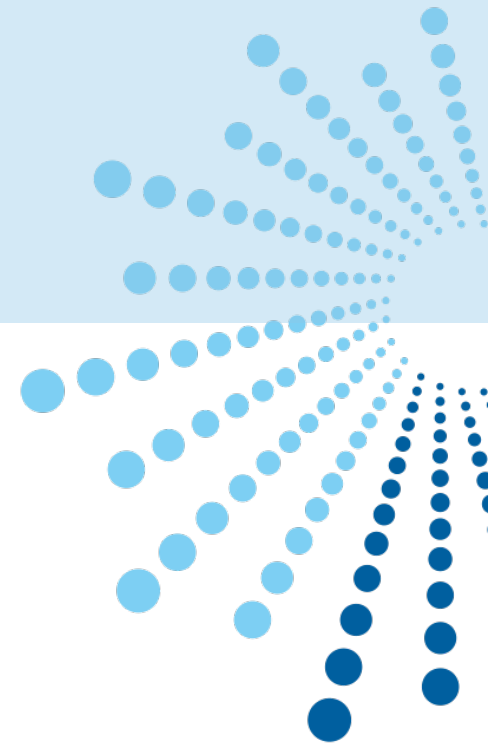
In this section, include a summary of all relevant evidence. This section can be organized in several ways. It is important that, however organized, the evidence is summarized clearly and accurately, and without opinion or bias. In this section, the writer should cite the evidence and information in the Appendices.



Pre-Hearing Tasks

07(a)

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Pre-Hearing Meetings

Review the Logistics for the Hearing

Set expectations

- Format
- Roles of the parties
- Participation
- Decorum
- Impact of not following rules

Cross Examination/Questioning Format & Expectations

Decision Maker



Review evidence and report



Review applicable policy and procedures



Preliminary analysis of the evidence



Determine areas for further exploration



Develop questions of your own



Anticipate the party's questions



May convene a pre-hearing meeting



Anticipate challenges or issues



Prepare the script



The Hearing

07(b)

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Purpose of the Hearing

1

Review and
Assess
Evidence

2

Make Findings
of Fact

3

Determine
Responsibility/
Findings of
Responsibility

4

Determine
Sanction and
Remedy

Cross Examination Questions

How will this work?

- Submitted in advance?
- Submit one by one?
- Each one is vocalized, approved/denied, then asked?
- Submit cross-exam questions by email or chat during hearing?

Roles and Responsibilities

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Hearing Participants

Complainant	the person bringing the complaint
Respondent	the person against whom the complaint has been filed
Advisor	will conduct cross examination; role varies depending on school
Adjudicator(s) or Panelist(s)	role varies depending on when in the process the hearing occurs and responsibility of the officer
Investigator	summarizes the investigation, answers questions
Witnesses	present in the room only when answering questions
Hearing Coordinator/Officer	coordinates all aspects of the hearing, ensures a fair and equitable hearing process, acts as a resource for all participants
Decision-Maker	makes decision as to whether policy was violated
Administrative Staff	assists with the logistical coordination of the people, the space, technology, etc.

Order of the Proceedings

01

Introductions
and instructions
by the Chair;
Opening
Statements

02

Presentation by
Investigator

03

Presentation of
information and
questioning of
the parties and
witnesses

04

Closing
Statements

05

Deliberation &
Determination

Opening Introductions and Instructions by the Chair



The University has a script for this portion of the proceedings, and it should be used.

- Introduction of the participants.
- Overview of the procedures.
- Overall goal: manage expectations.
- Be prepared to answer questions.



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Opening Statements

Optional: Not required by the regulations; institution may choose to allow.

- Prior to questioning beginning during the hearing, each party may be given the opportunity to make an opening statement.
- Intended to be a brief summary of the points the party would like to highlight.
- Directed to the Decision Maker and only the Decision Maker.
- Both parties should give opening statement before either is questioned.
- Typically, the complainant goes first.

Presentation of Information & Questioning of the Parties

01

The Hearing Panel will question Complainant first

02

Cross examination of Complainant will occur next

03

Follow up by the Hearing Panel

04

The Hearing Panel will question Respondent second

05

Cross examination of Respondent will occur next

06

Follow up by the Hearing Panel

Questioning of the Witnesses

01

The Chair will determine the order of questioning of witnesses

02

The Hearing Panel will question first

03

Advisor cross-examination will occur next (suggested: Complainant's advisor followed by Respondent's advisor)

04

Follow up by the Hearing Panel

Cross Examination

Who does it?

- Must be conducted by the advisor
- If party does not appear or does not participate, advisor can appear and cross
- If party does not have an advisor, institution must provide one

Cross Examination

Permissible Questions

- Questions must be relevant
- Not relevant
 - Duplicative questions
 - Questions that attempt to elicit information about
 - Complainants prior sexual history
 - Privileged information
 - Mental health

Cross Examination

Role of the Decision Maker

- Rulings by Decision Maker required
 - Explanation only required where question not permitted

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Closing Statements

Prior to the conclusion of the hearing, each party will have the opportunity to make a closing statement.

- Prior to the conclusion of the hearing, each party will have the opportunity to make a closing statement.
- Intended to be a brief summary of the points the party would like to highlight.
- Directed to the Decision Maker and only the Decision Maker .
- Not time to introduce new information or evidence.

Common Challenges

- Non-appearance by a party or witness
- Non-appearance by an advisor
- Party or witness appears but declines to answer some (or all) questions
- Disruptions
- Maintaining Decorum

Tips for Increasing Efficiency

01

Be prepared

02

Have an
experienced chair

03

Have back up plans
for technology
issues

04

Require pre-
hearing written
submissions

- of opening statements
- of questions in advance

Other Decisions

- Will you include Opening, Closing, or Impact Statements? NOT required, but you need to decide.
- How will questioning take place? Direct cross examination, indirect?
- How will questions be submitted?
- Will there be any restrictions on questions that can be asked, such as due to relevancy, already asked and answered, unduly harassing?
- If done remotely, how will the technology be set up?
- If in person, room set-up and who is in the room?

Deliberations

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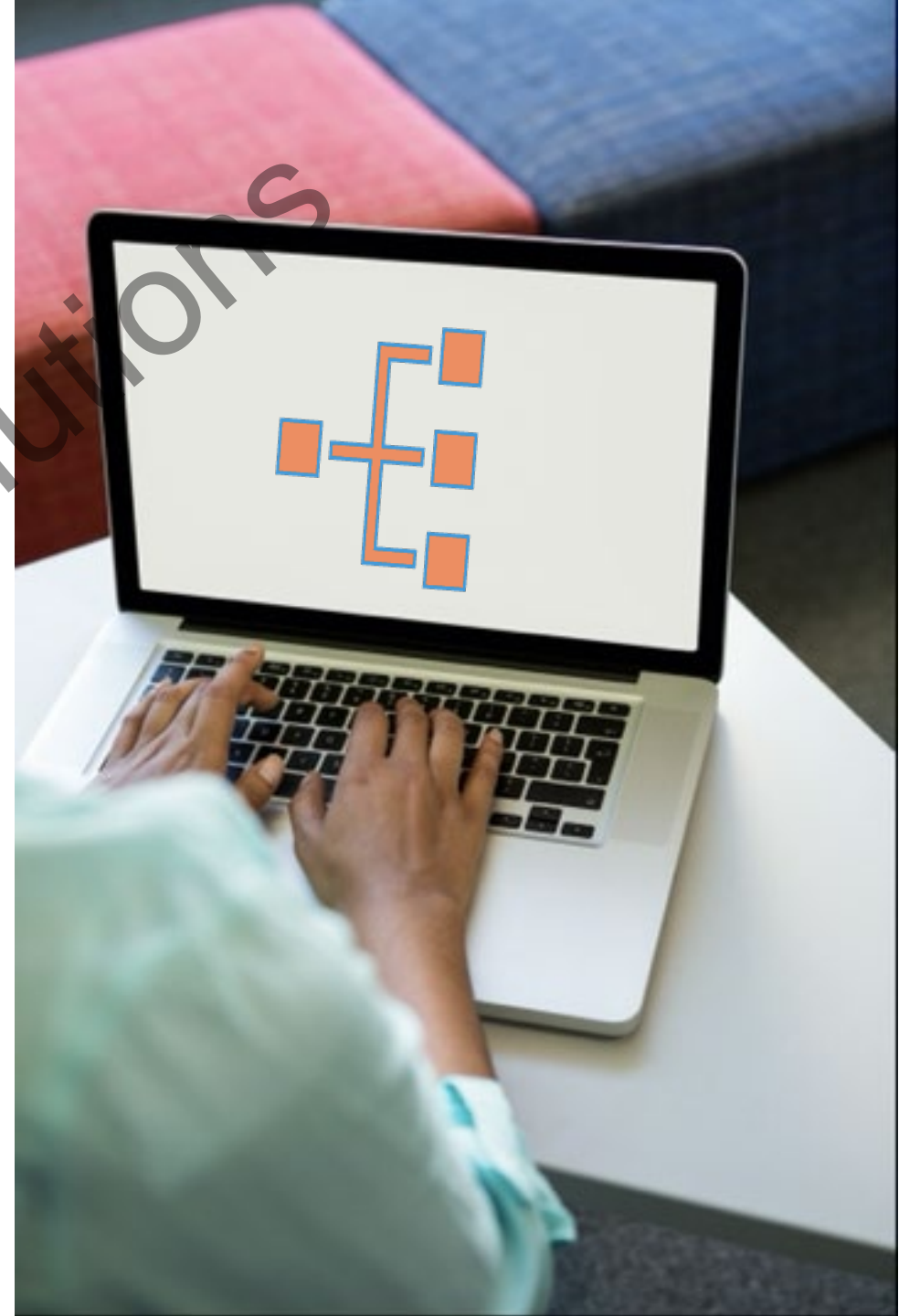
Findings of Fact

- **A "finding of fact"**
 - The decision whether events, actions, or conduct occurred, **or** a piece of evidence is what it purports to be
 - Based on available evidence and information
 - Determined by a preponderance of evidence standard
 - Determined by the fact finder(s)
- **For example...**
 - Complainant reports that they and Respondent ate ice cream prior to the incident
 - Respondent says that they did not eat ice cream
 - Witness 1 produces a timestamped photo of Respondent eating ice cream
- **Next steps?**

Policy Analysis

- Break down the policy into elements
- Organize the facts by the element to which they relate

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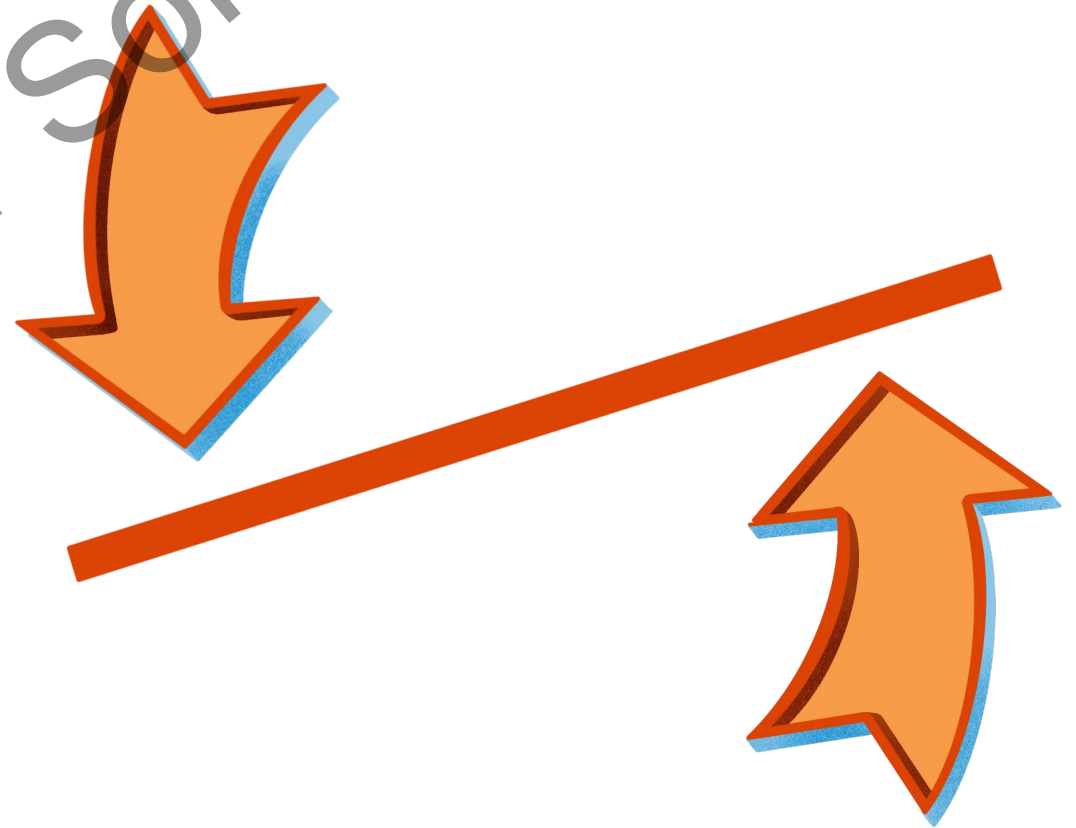
Did You Also Analyze...?

(if required by policy)

- On campus?
- Program or Activity?
- In a building owned/controlled by a recognized student organization?
- Substantial control over respondent and context?
- Complainant was attempting to access program/activity?

Weighing the Evidence & Making a Determination

1. Evaluate the relevant evidence collected to determine what weight, if any, you will afford that item of evidence in your final determination;
2. Apply the standard of proof and the evidence to each element of the alleged policy violation;
3. Make a determination as to whether or not there has been a policy violation.



Preponderance of the Evidence

- Standard of proof by which determinations of responsibility are made
- "More likely than not"
- It does not mean that an allegation must be found to be 100% true or accurate
- A finding of responsibility = There was sufficient reliable, credible evidence to support a finding, by a preponderance of the evidence, that the policy was violated
- A finding of not responsible = There was not sufficient reliable, credible evidence to support a finding, by a preponderance of the evidence, that the policy was violated



VAWA Components Relevant to Title IX Investigations and Adjudication

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Evaluating Evidence

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Evaluating the Evidence

Is it relevant?

Evidence is relevant if it has a tendency to make a material fact more or less likely to be true.

Is it authentic?

Is the item what it purports to be?

Is it credible/reliable?

Is the evidence worthy of belief?

What weight, if any, should it be given?

Weight is determined by the finder of fact!

Preponderance of the Evidence

- More likely than not
- Does not mean 100% true or accurate
- A finding = There was sufficient reliable, credible evidence to support a finding, by a preponderance of the evidence, that the policy was violated



Final Report

- The allegations
- Description of all procedural steps
- Findings of fact
- Conclusion of application of facts to the policy
- Rationale for each allegation
- Sanctions and Remedies
- Procedure for appeal



Appeals: Mandatory Grounds

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or
- (C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Appeals: Mandatory Grounds

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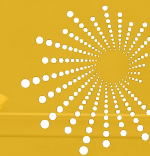
(C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

“

Final Rule § 106.45(b)(8)

[I]nstitutions must offer both parties an appeal from a determination regarding responsibility, and from a recipient's dismissal of a formal complaint or any allegations therein.

”



Appealing
sanctions?

Other grounds for
appeal? Your
discretion

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Practice Time

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Pre-Hearing

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Rapid Fire #1

The investigation is complete:

- It is time to schedule the hearing...

Using the chat box, share your "To Do" List for coordinating the hearing.



Rapid Fire Recap

Arranging for space

Arranging technology

Scheduling pre-hearing meetings with parties & advisors

Scheduling prehearing meetings of the panel

Providing report and record to panel and parties

Scheduling the hearing

Accommodations

Call for written submissions

Conflict checks

Other considerations?

You and your team did a great job scheduling the hearing and arranging all the logistics!

||| Rapid Fire #2

It is now one week prior to the hearing. You have already received and reviewed the report and record and you will be meeting with the rest of the panel (or spending some quite time by yourself) to prepare for the hearing.

Use the chat box to share what you plan to discuss/think about during the prehearing meeting.



Rapid Fire Recap

Development of introductory comments

Initial discussion of the evidence

Areas for further exploration

List of questions for the parties and the witnesses

Anticipation of potential issues

Logistics

Review of any written submissions by the parties

Other considerations?

Break Out!

#1

Say hi!

Pick a scribe

Discuss

- All groups: Areas or topics that you would like to explore further in the hearing
- Group 1: Questions for Complainant, Witnesses Emma and Charlie
- Group 2: Questions for Respondent, Witnesses Tom and Professor McPhee

Report Out

Group 1: Questions for
Complainant, Witnesses Emma and Charlie

Group 2: Questions for Respondent,
Witnesses Tom and Professor McPhee

Break Out!

#2

Say hi!

Pick a scribe

Discuss the list of proposed questions for:

Group 1: Questions for Complainant, Witnesses Emma and Charlie

Group 2: Questions for Respondent, Witnesses Tom and Professor McPhee

Report Out

Group 1: Questions for
Complainant, Witnesses Emma and Charlie

Group 2: Questions for Respondent,
Witnesses Tom and Professor McPhee

Questions Submitted by Complainant's Advisor

Questions for Respondent

- How often do you stalk girls?
- Isn't it true that you do this all the time
- Do you keep stalking me because you're OCD?
- Have you ever been removed from another group project because you could not get along with others?
- Do you enjoy scaring women?
- How often do you imagine that women like you?
- When you first talked to me about your girlfriend breaking up with you, who was your girlfriend or did you make that up just so you could talk to me?
- Why did you keep offering to work with Emma in person instead of by Zoom?
- Did you have a thing for Emma?
- Did you and Emma ever end up hooking up?

Questions Submitted by Complainant's Advisor

Questions for Tom

- Can you think of any reason for Oliver to be hanging out in the garage with flowers, other than to frighten Samantha?
- Oliver was pretty creepy, wasn't he?
- Did you see him throw an object at Samantha?
- Do you believe he was acting in self defense when he threw the object?
- Do you think there was any good reason for him to throw anything at her?
- You said Samantha is really pretty and guys hit on her a lot. Don't you think someone who has had a lot of male attention would be in the best position to know which kind of male attention is acceptable, and when it is stalking?

Questions Submitted by Complainant's Advisor

Questions for Emma

- Did Oliver seem fixated on Samantha when you were all part of the class project?
- Did Oliver insist that the two of you work together in person instead of online?
- How often did he force you to work in person with him after classes?
- Were you afraid of him?
- Why did you lie to Emma and tell her that Samantha was “really troubled” and “having personal issues”?
- What did you mean by that?
- Do you often tell lies?

Questions Submitted by Complainant's Advisor

Questions for Charlie

- So are you the one you suggested he stalk her social media to find a food or drink she liked?
- Is that your M.O. with girls?
- Why do you think Samantha and Oliver had a plan to get together one night and talk?
- Do you know for sure there was a confirmed plan?
- What proof did Oliver give you to prove there was a *real* plan, and not an imaginary one?
- You said Samantha was “rude” because you could not do a lot of work on the group project. What did you mean by that?
- How long have you known Oliver?
- Isn't it true you just don't like Samantha?
- Have you ever been accused of sexual harassment or stalking?
- Isn't it true that you would say anything to support a guy who has been accused?

Questions Submitted by Complainant's Advisor

Questions for Professor McPhee

- Why didn't you tell him to stop stalking me?
- Weren't you supposed to forward my Title IX Complaint to the Coordinator and don't you think that if you had done so, I would have been spared his stalking?

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Questions submitted by Respondent's Advisor

Questions for Complainant

- Isn't it true you found me attractive after we first met?
- You wanted to hook up with me, didn't you?
- You made this complaint only because you wanted your boyfriend's attention, isn't that true?
- You couldn't complete your end of the project without me, right?
- You kept calling me and asking me for help, isn't that true?
- You told the investigator you imagined seeing me everywhere. Where do you think you saw me?
- Why were you always thinking of me?
- And how often do you hallucinate?
- Do you have any imaginary friends?
- How often do you imagine seeing people who are not there?
- How often has this happened in the past?
- Why did you ask your boyfriend to walk you to your car when you knew you were supposed to meet me there?
- You said you were frightened by seeing Oliver in the parking garage. Did he have a weapon? Did he try to touch you? Did he try to hit you? Describe each and every way he tried to attack you that night.

Questions submitted by Respondent's Advisor

Questions for Emma

- Were you frustrated when working on the group project?
- Why?
- Why did you think Oliver was more frustrated than others?
- Why did you think he was “taking it out” on Samantha if he was frustrated with the whole group?
- Are you and Samantha friends?
- Did Samantha tell you what to say in the investigation?
- Are you one of those “Believe all victims” people?

Questions submitted by Respondent's Advisor

Questions for Tom

- When you saw Oliver in the parking garage, were you frightened?
- What, specifically, did Oliver do that was frightening?
- Does Samantha always over-react?
- Does Samantha over-react when she is trying to get attention from you?
- What, specifically, did Oliver throw at her?

Questions submitted by Respondent's Advisor

Questions for Professor McPhee

- Isn't it true that Samantha was doing poorly in class?
- What grade did she have up to the project and what grade did she get on the project?
- After she made this complaint, did she get some special treatment or accommodation in your class?
- Isn't it true that, once you told her she would have to do the work, she suddenly made up a story about Oliver to paint him in a bad light?
- Isn't it true that, before she told you this lie, you had no reason to think poorly of Oliver?

Questions?

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Send Feedback



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